

DO NOT FILE COPY
ORIGINAL

Handwritten mark

FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

205420 4 13 PM '93

FCC 93-354

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992)
)
Broadcast Signal Carriage Issues)

DISPATCHED BY

MM Docket No. 92-259 ✓

ORDER

Adopted: July 15, 1993

; Released: July 16, 1993

By the Commission:

1. On March 11, 1993, the Commission adopted a Report and Order¹ in this proceeding to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act").² Pursuant to the rules adopted in the Report and Order, cable systems were required to commence carriage of local broadcast stations entitled to must-carry status beginning on June, 2, 1993.³ On June 17, 1993, local broadcast stations were required to make their initial election of must-carry or retransmission consent status and were required to notify cable systems of their election.⁴ Those broadcast stations which elected must-carry status were required to notify the cable system of their preferred channel position at that time.⁵ Those broadcast stations which failed to elect either must-carry or retransmission consent status are deemed must-carry stations by default.⁶

¹ Report and Order in MM Docket 92-259, 8 FCC Rcd 2965 (1993). See also, Clarification Order, 58 FR 32449 (June 10, 1993).

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§4-6, 106 Stat. 1460 (1992).

³ 47 C.F.R. § 76.56(a), (b).

⁴ 47 C.F.R. § 76.64(f)(1).

⁵ 47 C.F.R. § 76.57(d).

⁶ 47 C.F.R. § 76.64(f)(3).

2. We are concerned that some confusion may exist over whether stations which elected retransmission consent on June 17, 1993, are entitled to continued carriage on a cable system until the October 6, 1993, effective date for retransmission consent.⁷ NAB and INTV request clarification that local commercial stations electing retransmission consent retain their must-carry rights until October 6, 1993. NCTA and TWE oppose this request and argue that such an interpretation contradicts the language of Section 325(3)(B) of the 1992 Act, which states that "If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system." They argue that once the retransmission consent election is made, all must-carry rights are forfeited. In response, NAB contends that because retransmission consent is not effective until October 6, 1993, all other must-carry rights remain effective until that date.

3. We clarify that local broadcast stations which are otherwise entitled to mandatory carriage and which have elected retransmission consent may not have their carriage discontinued by any cable system prior to October 6, 1993, the effective date of their retransmission consent elections.⁸ As we stated in the Report and Order, the implementation schedule was adopted to reduce the number of changes to which the cable operator and subscribers would be subjected.⁹ We rejected cable commenter's suggestions that retransmission consent and must-carry (except for channel positioning requirements) take effect on the same date because we believed Congressional intent precluded us from delaying implementation of must-carry until October 6, 1993.¹⁰ It was our

⁷ Petitions for Reconsideration were filed by National Association of Broadcasters ("NAB"), Association of Independent Television Stations ("INTV") and Community Antenna Television Association ("CATA") which address, in part, the issues relating to carriage between June 17 and October 6 as well as the channel positioning of default must-carry stations. Time Warner Entertainment Company, L.P. ("TWE") and The National Cable Television Association ("NCTA") filed oppositions to which NAB responded. Because of the time-sensitive nature of these issues, we will resolve them in this Order. We will address all other issues raised in these petitions in a separate order.

⁸ 47 C.F.R. § 76.64(a).

⁹ See Report and Order, 8 FCC Rcd 3001-2, at paras. 150-157.

¹⁰ See Report and Order, 8 FCC Rcd 3001, at para. 153.

intent that, during the transition period, all eligible signals continue to be carried until such time as the cable operator must discontinue carriage of the signal due to a lack of consent from the broadcast television station. We believe that this approach is consistent with the language of the 1992 Act which provides that must-carry rights are not available to stations that elect retransmission consent. See 47 U.S.C. §325(b)(4). Section 325(b)(3)(B), however, provides that the Commission's retransmission consent regulations shall require that television stations make an election between must-carry and retransmission consent "within one year after the date of enactment" of the 1992 Act and every three years thereafter. Reading these two sections together, and based on the reasons set for in the Report and Order,¹¹ it is reasonable to delay the effectiveness of stations' retransmission consent election (and thus their forfeiture of must-carry rights) until October 6, 1993.¹² Accordingly, a station choosing retransmission consent is entitled to must-carry until that date. We reaffirm that this approach will be the least disruptive to subscribers and will ensure an orderly transition to retransmission consent. We are amending Section 76.56 of our rules to reflect this clarification.

4. In an effort to assist cable systems in establishing the channel line-up changes which will be required on October 6, 1993, we also take this opportunity to clarify the channel positioning rights of local commercial broadcast stations which failed to elect must-carry or retransmission consent and which, therefore, default to must-carry status. We continue to believe that the channel positioning rights of all television broadcast stations were intended by Congress to be determined by the broadcaster and not determined by the cable system.¹³ However, in those instances where the broadcaster has failed to make an election and to notify the cable system, we believe it is unfair to leave the cable system uninformed as to where to place the signal. In this regard, NAB and INTV argue that the channel positioning of a default must-carry station should be one of the options specified in the statute. In contrast, the Community Antenna Television Association ("CATA"), TWE and NCTA assert that the channel position of a default must-carry station should be at the discretion of the cable operator, as long as it is placed on the basic service tier. TWE argues that to grant a default must-carry station one of the statutory channel positions would constitute a windfall to the

¹¹ 8 FCC Rcd 3001-2, paras. 151-156.

¹² Similarly, when triennial must-carry/retransmission consent elections are made on October 1, they will not become effective until January 1, in order to coordinate with copyright royalty accounting periods.

¹³ See Report and Order, 8 FCC Rcd 2987-8, at para. 88.

defaulting station. These parties are also concerned that such a rule could lead to conflicting channel positioning rights between stations which made an affirmative must-carry election with a preferred channel position and a default must-carry station which has never been carried and which therefore has only its over-the-air channel as an option. They also argue that granting the statutory channel position provides no incentive for a station to make an affirmative election, as such station will be insured of a preferred channel position. NAB responds that the 1992 Act provides that all must-carry signals will be carried on the channel positions specified in the Act, and that there is no basis for making an exception for stations which are considered must-carry by default.

5. As stated in the Report and Order, the default election was to be self-executing without need for interaction between the cable system and the broadcaster. We thus clarify that, after October 6, 1993, cable systems which are required to carry the signal of a default commercial must-carry broadcaster shall place that signal on one of the statutorily defined positions, at the system's discretion.¹⁴ We believe that this will preserve Congress' intent that must-carry stations be carried on their over-the-air, historical or current channel position while allowing the cable system to decide which of the statutory channel positions will be used. We are amending Section 76.57 of our rules to reflect the channel position options of a default must-carry station.

6. In the Report and Order, we declined to establish any rules governing conflicts among must-carry stations' requests for specific channels.¹⁵ We now conclude that such rules are necessary to resolve conflicts between local commercial stations that affirmatively elected carriage and those receiving carriage by default. Specifically, in the event of such a conflict, the request from the local commercial station which made an affirmative election should be given priority.¹⁶ We believe this approach is

¹⁴ Section 76.57 states that at the election of the licensee, local commercial stations may be carried on their over-the-air channel, the channel on which they were carried on July 19, 1985, or the channel on which they were carried on January 1, 1992. Broadcast stations may also be carried on any other channel position if mutually agreed upon by the station and the cable operator.

¹⁵ See Report and Order, 8 FCC Rcd 2988, at para. 90.

¹⁶ In the event this station has selected the only statutory channel position available to the station carried by default, the cable system may place that station on a channel of the cable system's choice, so long as that channel is included on the basic

fair to all parties since the default must-carry station could have protected its channel positioning rights by affirmatively electing must-carry and a specific channel position.

7. Accordingly, IT IS ORDERED that pursuant to Section 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Part 76 of the Commission Rules, 47 C.F.R. Part 76, Section 76.56 and Section 76.57 ARE AMENDED as set forth in the Appendix.

8. IT IS ORDERED that the rules set forth in the Appendix of this Order will be effective on August 30, 1993.

9. IT IS FURTHER ORDERED that the Petitions for Reconsideration filed on behalf of the National Association of Broadcasters and the Association of Independent Television Stations are GRANTED IN PART and the Petition for Reconsideration filed by Community Antenna Television Association is DENIED IN PART, only to the extent specified herein.

10. For further information on this proceeding, contact Elizabeth W. Beaty, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
William F. Caton
Acting Secretary

Appendix

Rules

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76 -- CABLE TELEVISION SERVICE

1. The Authority Citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat, 1460.

2. Section 76.56 is amended by adding a paragraph (b) (7) to read as follows:

§ 76.56 Signal carriage obligations.

* * * * *

(b) * * *

(7) A local commercial television station carried to fulfill the requirements of this paragraph, which subsequently elects retransmission consent pursuant to Section 76.64 of this chapter, shall continue to be carried by the cable system until the effective date of such retransmission consent election.

* * * * *

3. Section 76.57 is amended by adding a paragraph (e) after the note to read as follows:

§ 76.57 Channel positioning.

* * * * *

(e) Pursuant to Section 76.64(f) (3) of this chapter, a local commercial broadcast television station that fails to make an election is deemed a must-carry station. A cable operator shall carry such a television station on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992. In the event that none of these specified channel positions is available due to a channel positioning request from a commercial television station affirmatively asserting its must-carry rights

or such a request from a qualified local noncommercial educational station, the cable operator shall place the signal of such a television station on a channel of the cable system's choice, so long as that channel is included on the basic service tier.